

Indiana Public Defender Commission Meeting Minutes

May 4th, 2006

Chairman Norman Lefstein called the meeting to order at 2:04 p.m. Commission members attending were: Mr. Les Duvall, Ms. Susan Carpenter, Rep. Ralph Foley, Ms. Monica Foster, Ms. Bettye Lou Jerrell, and Sen. Joseph Zakas. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary.

David Cook, Chief Public Defender of the Marion County Public Defender Agency, and Victoria Ursulskis, Executive Deputy of the Marion County Public Defender Agency also attended. Members not in attendance were: Hon. Daniel Donahue, Sen. Timothy Lanane, and Sen. Robert Kuzman.

- 1) **Discussion of Commission Minutes from the April 6, 2006 meeting:** Ms. Jerrel noted that much of the discussion from the April meeting was not adequately captured in the proposed minutes, and that the minutes should be more representative of the discussions that take place. Chairman Lefstein agreed and stated that although the conclusions are generally complete, with website posting, more complete reflection of the discussions would add value. On that basis, Ms. Foster moved to table the minutes until the next meeting, to see minutes that more accurately reflect what in totality happened at that meeting. Ms. Jerrel seconded the motion and the motion passed.
- 2) **Discussion of the April 6, 2006 Recommendations for Reimbursements in Noncapital Cases:** Chairman Lefstein discussed the misunderstanding that occurred with Counsel Murphy regarding the 8 counties with caseload compliance issues that were to be dealt with at this special meeting. These counties were sent letters by counsel indicating they were being paid in full. The Chairman indicated that it was the intention to withhold payment of those claims pending more information, but that he was reluctant to reverse the action taken. Ms. Carpenter inquired about a tape of the meeting, and was informed it was unclear. Ms. Jerrel asked if the Commission will be insisting that the standards be followed in the future, to which the Chairman indicated the Commission intention, even though there is ambiguity regarding caseload standards. Ms. Carpenter inquired about the Lake and Madison County issues that do not appear on the meeting agenda. The Chairman responded that these issues are not yet resolved, but due to a full agenda, would not be resolved today.
- 3) **Discussion of Proposed Task Force on Indigent Defense Improvements in Indiana:** The Chairman proposed that he would approach the Chief Justice to determine whether or not the Chief Justice would be interested in appointing a state-wide study or task force or if the Commission should proceed on its own, with the understanding and acceptance of the Chief Justice. Ms. Foster inquired as to the cost of such a study and was informed that \$125,000 to \$170,000 was a reasonable expectation, and that the American Bar Association may be responsive to an inquiry, but that the task force itself would be responsible for funding. Ms. Carpenter made a motion to initiate discussion of a statewide study on indigent defense delivery in Indiana. Ms. Foster seconded and the motion passed.
- 4) **Discussion of Marion County 3rd and 4th Quarter Reimbursements:** Chairman Lefstein explained that Marion County had been using higher caseload numbers than other counties. Mr. Landis further explained that since originally there were county courts, combined categories were in use, but these are

no longer necessary due to spreadsheet technology. Since the Commission staff had never before caught the county's use of higher numbers they appeared to now be out of compliance. The Chairman indicated he was satisfied that the Commission had led the county to the situation they were in now, suggesting no penalty for the third and fourth quarters, but that there is an issue going forward.

Respecting Marion County's position, Mr. Cook cited the belief that the county had been operating in compliance with the standards. Counsel Murphy inquired about the mixed caseloads of Marion County's attorneys in the D Felony Division, asking if misdemeanors had been included in those D Felony numbers. Mr. Cook indicated that they count a case for a case for a case, and that it was a possibility that non-reimbursable misdemeanors were included in those cases.

Returning to the issue of reimbursement, the Chairman proposed reimbursement for the 3rd and 4th quarters since the numbers indicate compliance. To determine what the actual reimbursement is going to be, the shortage of funds needs to be considered. After discussion of the various alternatives, the Commission determined, along with the agreement of Mr. Cook, that the entire shortage would be absorbed by Marion County. Motion was made by Ms. Foster, seconded by Rep. Foley and passed.

The Chairman then asked Mr. Cook how the elimination of the combination categories would impact Marion County. Mr. Cook requested that the Commission think about the removal of the two combination categories, since for Marion County, he stated that it would effectively mean the end of mixed caseload assignments, due to the undue administrative burden it would place on the county. Ms. Jerrel indicated that the process of reimbursement needed to be fair for both large and small counties.

- 5) **Discussion of Caseload Compliance and 12 month Period:** Chairman Lefstein explained that his perception of a 12-month period was never a calendar year, and that the language of the Standard never uses the words "calendar year." Furthermore, there is no logic in doing it on a calendar year. Ms. Carpenter agreed that it couldn't be done on a calendar year. Ms. Foster thought it was a calendar year. Rep. Foley assumed it was. Mr. Landis presented a hypothetical fixed 12-month period, and explained that the "rolling year" represents a change over what he has been telling counties over the years. After further discussion, Rep. Foley offered a motion that substantial compliance will be based on a rolling year. Ms. Carpenter seconded the motion, and it passed. Ms. Foster did not vote.
- 6) **Revision of "Standard J" Caseload Reporting:** Chairman Lefstein inquired about the timing, which resulted in the spreadsheet revision occurring before the revision of Standard J. Counsel Murphy informed the Commission that he had been authorized to make administrative changes as a result of a discussion with the Chair prior to March 3, 2006. Ms. Foster asked if the Commission voted on the spreadsheet and Ms. Carpenter noted that the Standards are inconsistent with each other. Representative Foley indicated that he would favor some type of phase-in, with accommodations to Marion County as well. Several alternative suggestions for implementing the new spreadsheet-reporting format were raised.

Ms. Foster indicated concern with compliance as it related to reporting on the "old" spreadsheet. She stated that her approval of money must be accompanied by the knowledge that the county is meeting the standard reported on the old form, but that the county should report on the new form as well until the

standard is amended by the Commission. Ms. Carpenter indicated her opinion that the new form does not amend the standard. Ms. Jerrel indicated care must be taken since this is the first time the Commission has really looked at how this system is working and that fairness to the counties is important. Chairman Lefstein suggested that comparative spreadsheets be developed for those counties that seem problematic, and allow time for feedback. Ms. Foster reiterated the concern of authorizing the release of state funds when it is not possible to be certain some standard is met. The Chairman then summarized the discussion in four points:

1. Continue to use the latest revision of the Spreadsheet that is on the website.
2. Counties out of compliance due to the change in spreadsheet, staff will supply the information in both the old and new forms to compare.
3. Staff will develop a proposal for amending caseload standards and proposal to receive feedback from counties affected with a potential effective date.
4. Commission will utilize considerable discretion in interpreting standards for those counties affected that might not be in compliance given the use of the new spreadsheet, which eliminates the two combination categories.

- 7) **Contract Attorneys Supplementing with Assigned Caseloads:** Chairman Lefstein explained the troubling language that exists in the Commission approved contract, Section C paragraph 2, which allows for a contract attorney, upon reaching a prescribed limit of cases, shall not be required to take on more cases, but may do so as assigned counsel. After considerable discussion of the issues surrounding the inability to monitor private caseloads for public defenders, the Chairman inquired about the full time public defender with private practice advertised in the Yellow Pages. Mr. Cook responded by stating his Board of Directors allows it because salaries were so low, they let the attorneys have private practices, but that his office doesn't monitor the extent of the private practice, only the repeatedly absent situations are addressed.

Given the absence of any hard data, the Chairman decided no proposal for action was appropriate.

- 8) **Next Meeting Date:** July 13, 2006 at 2:00 p.m.
- 9) **Meeting Adjournment:** The meeting adjourned at 5:00

Norman Lefstein, Chairman

Date